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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 **Brian Whitaker**

16 Plaintiff,

17 v.

18 **Tiffany and Company U.S. Sales,
19 LLC, a Delaware Limited Liability
20 Company**

21 Defendant.

22 **Case No.**

23 **Complaint For Damages And
24 Injunctive Relief For Violations
25 Of:** Americans With Disabilities
Act; Unruh Civil Rights Act

26 Plaintiff Brian Whitaker complains of Tiffany and Company U.S. Sales,
27 LLC, a Delaware Limited Liability Company; and alleges as follows:

28 **PARTIES:**

29 1. Plaintiff is a California resident with physical disabilities. He is
30 substantially limited in his ability to walk. He suffers from a C-4 spinal cord
31 injury. He is a quadriplegic. He uses a wheelchair for mobility.

32 2. Defendant Tiffany and Company U.S. Sales, LLC owned Tiffany & Co.
33 located at or about 660 Stanford Shopping Center, Palo Alto, California, in
34 March 2021 and April 2021.

1 3. Defendant Tiffany and Company U.S. Sales, LLC owns Tiffany & Co.
2 ("Store") located at or about 660 Stanford Shopping Center, Palo Alto,
3 California, currently.

4 4. Plaintiff does not know the true names of Defendants, their business
5 capacities, their ownership connection to the property and business, or their
6 relative responsibilities in causing the access violations herein complained of,
7 and alleges a joint venture and common enterprise by all such Defendants.
8 Plaintiff is informed and believes that each of the Defendants herein is
9 responsible in some capacity for the events herein alleged, or is a necessary
10 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
11 the true names, capacities, connections, and responsibilities of the Defendants
12 are ascertained.

13

14 **JURISDICTION & VENUE:**

15 5. The Court has subject matter jurisdiction over the action pursuant to 28
16 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
17 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

18 6. Pursuant to supplemental jurisdiction, an attendant and related cause
19 of action, arising from the same nucleus of operative facts and arising out of
20 the same transactions, is also brought under California's Unruh Civil Rights
21 Act, which act expressly incorporates the Americans with Disabilities Act.

22 7. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
23 founded on the fact that the real property which is the subject of this action is
24 located in this district and that Plaintiff's cause of action arose in this district.

25

26 **FACTUAL ALLEGATIONS:**

27 8. Plaintiff went to the Store in March 2021 with the intention to avail
28 himself of its goods or services motivated in part to determine if the

1 defendants comply with the disability access laws. Not only did Plaintiff
2 personally encounter the unlawful barriers in March 2021, but he wanted to
3 return and patronize the business several times but was specifically deterred
4 due to his actual personal knowledge of the barriers gleaned from his
5 encounter with them.

6 9. The Store is a facility open to the public, a place of public
7 accommodation, and a business establishment.

8 10. Unfortunately, on the date of the plaintiff's visit, the defendants failed
9 to provide wheelchair accessible sales counters in conformance with the ADA
10 Standards as it relates to wheelchair users like the plaintiff.

11 11. The Store provides sales counters to its customers but fails to provide
12 any wheelchair accessible sales counters.

13 12. One problem that plaintiff encountered was that the sales counter was
14 too high. While there was a lowered portion of the counter, transactions
15 necessarily take place above the higher counter where the point-of-sale
16 machines were located. In fact, an employee tried to lower the point-of-sale
17 machine during plaintiff's visit, but he was not able to. As a result, an employee
18 had to hold the point-of-sale machine and assist the plaintiff who struggled to
19 enter his PIN.

20 13. Plaintiff believes that there are other features of the sales counters that
21 likely fail to comply with the ADA Standards and seeks to have fully compliant
22 sales counters for wheelchair users.

23 14. On information and belief, the defendants currently fail to provide
24 wheelchair accessible sales counters.

25 15. These barriers relate to and impact the plaintiff's disability. Plaintiff
26 personally encountered these barriers.

27 16. As a wheelchair user, the plaintiff benefits from and is entitled to use
28 wheelchair accessible facilities. By failing to provide accessible facilities, the

1 defendants denied the plaintiff full and equal access.

2 17. The failure to provide accessible facilities created difficulty and
3 discomfort for the Plaintiff.

4 18. The defendants have failed to maintain in working and useable
5 conditions those features required to provide ready access to persons with
6 disabilities.

7 19. The barriers identified above are easily removed without much
8 difficulty or expense. They are the types of barriers identified by the
9 Department of Justice as presumably readily achievable to remove and, in fact,
10 these barriers are readily achievable to remove. Moreover, there are numerous
11 alternative accommodations that could be made to provide a greater level of
12 access if complete removal were not achievable.

13 20. Plaintiff will return to the Store to avail himself of its goods or services
14 and to determine compliance with the disability access laws once it is
15 represented to him that the Store and its facilities are accessible. Plaintiff is
16 currently deterred from doing so because of his knowledge of the existing
17 barriers and his uncertainty about the existence of yet other barriers on the
18 site. If the barriers are not removed, the plaintiff will face unlawful and
19 discriminatory barriers again.

20 21. Given the obvious and blatant nature of the barriers and violations
21 alleged herein, the plaintiff alleges, on information and belief, that there are
22 other violations and barriers on the site that relate to his disability. Plaintiff will
23 amend the complaint, to provide proper notice regarding the scope of this
24 lawsuit, once he conducts a site inspection. However, please be on notice that
25 the plaintiff seeks to have all barriers related to his disability remedied. See
26 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
27 encounters one barrier at a site, he can sue to have all barriers that relate to his
28 disability removed regardless of whether he personally encountered them).

1 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
2 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
3 Defendants.) (42 U.S.C. section 12101, et seq.)

4 22. Plaintiff re-pleads and incorporates by reference, as if fully set forth
5 again herein, the allegations contained in all prior paragraphs of this
6 complaint.

7 23. Under the ADA, it is an act of discrimination to fail to ensure that the
8 privileges, advantages, accommodations, facilities, goods and services of any
9 place of public accommodation is offered on a full and equal basis by anyone
10 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
11 § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 12 a. A failure to make reasonable modifications in policies, practices,
13 or procedures, when such modifications are necessary to afford
14 goods, services, facilities, privileges, advantages, or
15 accommodations to individuals with disabilities, unless the
16 accommodation would work a fundamental alteration of those
17 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 18 b. A failure to remove architectural barriers where such removal is
19 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
20 defined by reference to the ADA Standards.
- 21 c. A failure to make alterations in such a manner that, to the
22 maximum extent feasible, the altered portions of the facility are
23 readily accessible to and usable by individuals with disabilities,
24 including individuals who use wheelchairs or to ensure that, to the
25 maximum extent feasible, the path of travel to the altered area and
26 the bathrooms, telephones, and drinking fountains serving the
27 altered area, are readily accessible to and usable by individuals
28 with disabilities. 42 U.S.C. § 12183(a)(2).

1 24. When a business provides facilities such as sales or transaction counters,
2 it must provide accessible sales or transaction counters.

3 25. Here, accessible sales or transaction counters have not been provided in
4 conformance with the ADA Standards.

5 26. The Safe Harbor provisions of the 2010 Standards are not applicable
6 here because the conditions challenged in this lawsuit do not comply with the
7 1991 Standards.

8 27. A public accommodation must maintain in operable working condition
9 those features of its facilities and equipment that are required to be readily
10 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

11 28. Here, the failure to ensure that the accessible facilities were available
12 and ready to be used by the plaintiff is a violation of the law.

13

14 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL
15 RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
16 Code § 51-53.)**

17 29. Plaintiff repleads and incorporates by reference, as if fully set forth
18 again herein, the allegations contained in all prior paragraphs of this
19 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
20 that persons with disabilities are entitled to full and equal accommodations,
21 advantages, facilities, privileges, or services in all business establishment of
22 every kind whatsoever within the jurisdiction of the State of California. Cal.
23 Civ. Code §51(b).

24 30. The Unruh Act provides that a violation of the ADA is a violation of the
25 Unruh Act. Cal. Civ. Code, § 51(f).

26 31. Defendants’ acts and omissions, as herein alleged, have violated the
27 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
28 rights to full and equal use of the accommodations, advantages, facilities,

1 privileges, or services offered.

2 32. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
3 discomfort or embarrassment for the plaintiff, the defendants are also each
4 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
5 (c).)

6

7 **PRAYER:**

8 Wherefore, Plaintiff prays that this Court award damages and provide
9 relief as follows:

10 1. For injunctive relief, compelling Defendants to comply with the
11 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
12 plaintiff is not invoking section 55 of the California Civil Code and is not
13 seeking injunctive relief under the Disabled Persons Act at all.

14 2. For equitable nominal damages for violation of the ADA. See
15 *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021)
16 and any other equitable relief the Court sees fit to grant.

17 3. Damages under the Unruh Civil Rights Act, which provides for actual
18 damages and a statutory minimum of \$4,000 for each offense.

19 4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
20 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

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22 Dated: April 26, 2021

CENTER FOR DISABILITY ACCESS

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24 By: _____

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Amanda Seabock, Esq.
Attorney for plaintiff